

**STATE OF FLORIDA  
BOARD OF ACCOUNTANCY**

**IN RE: PETITION FOR VARIANCE BY  
RICARDO J. DIAZ**

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	11/13/2012
File #	2012-07251

**ORDER GRANTING PETITION**

Petitioner, Ricardo J. Diaz, filed a petition for a permanent variance from the requirements of Rule 61H1-28.0052(1)(b), Florida Administrative Code, on July 30, 2012. The notice of the petition appeared in the Florida Administrative Weekly on August 24, 2012, in Volume 38 Number 34; no comments by interested persons were received. The petition was heard at a duly-noticed public meeting of the Board of Accountancy on September 28, 2012, in Tampa, Florida. At the hearing on this matter, Petitioner was neither present nor represented by counsel. The Board was represented by Mary Ellen Clark, Assistant Attorney General.

**STATEMENT OF RELEVANT FACTS**

**VW 2012-252**

The facts relevant to the petition are as follows:

1. Petitioner is an applicant to take the examination for licensure as a certified public accountant (CPA).
2. Rule 61H1-28.0052(1)(b), FAC, provides in part, "candidates must pass all four test sections of the CPA Examination within a rolling eighteen-month period, which begins on the NASBA grade release date for the first test section(s) passed."
3. Petitioner passed the AUD portion of the CPA examination on September 18, 2010, and credit for that portion of the examination expired on March 17, 2012. Petitioner passed the REG portion of the examination on December 17, 2010, and credit for that portion of the examination expired on June 16, 2012. Petitioner passed

the FAR portion of the examination on February 23, 2012, and credit for that portion of the examination expires on August 22, 2013. Petitioner passed the BEC portion of the CPA examination on June 8, 2012, and credit for that portion of the examination expires on December 7, 2013.

4. Petitioner was scheduled to sit for the BEC portion of the CPA examination on February 28, 2012, but was unable to when his wife required an emergency c-section after which both his wife and newborn child became sick and required hospitalization. Petitioner also became sick during this time and he was unable to study as planned. Petitioner rescheduled and passed the BEC portion of the CPA examination on June 8, 2012, approximately three months passed the eighteen month deadline.

5. Petitioner seeks a permanent variance from Rule 61H1-28.0052(1)(b), FAC, to allow him an extension of time of three months beyond the eighteen months provided in rule to retain the passing score on the AUD portion of the examination.

#### **GROUND FOR APPROVAL**

The Board determined the petition should be granted on the following grounds:

6. Petitioner established that the Board's full application of Rule 61H1-28.0052(1)(b), FAC, to his circumstances would violate principles of fairness and would impose a substantial hardship on him.

7. Petitioner established that, if he were granted the variance, the purpose of the accountancy examination statute would be met as required by Section 473.306, FS.

This Order shall become effective upon filing with the Clerk of the Department of Business and Professional Regulation.

**DONE AND ORDERED** this 6<sup>th</sup> day of November, 2012,

by the Florida Board of Accountancy.

  
Veloria A. Kelly, Division Director ✓

**NOTICE TO APPLICANT**

You may seek review of this Order, pursuant to Sections 120.569 and 120.57, Florida Statutes, by filing a petition with the Division Director of the Board, 240 Northwest 76<sup>th</sup> Drive, Suite A, Gainesville FL 32607, within 21 days of receipt of this Order. If you dispute any material fact upon which the Board's decision is based, you may request a hearing before an administrative law judge pursuant to Section 120.57(1), Florida Statutes; your petition must contain the information required by Rule 28-106.201, Florida Administrative Code, a copy of which is enclosed, including a statement of the material facts which are in dispute. If you do not dispute any material fact, you may request a hearing before the Board pursuant to Section 120.57(2), Florida Statutes; your petition must include the information required by Rule 28-106.301, Florida Administrative Code, a copy of which is enclosed. If you request a hearing, you have the right to be represented by an attorney or other qualified representative, to take testimony, to call or cross-examine witnesses, to have subpoena and subpoena duces tecum issued, and to present written evidence or argument.

Pursuant to Section 120.573, Florida Statutes, you are hereby notified that mediation pursuant to that section is not available.

**Certificate of Service**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Certified to Ricardo J. Diaz, 9013 Lee Vista Blvd., Apt. 1901, Orlando, Florida 32829, and to Jesslyn Krouskroup, Chief Attorney, Joint Administrative Procedures Committee, Pepper Building, Room 680, 111 W. Madison Street, Tallahassee, Florida 32399-1400, and Mary Ellen Clark, Assistant Attorney General, PL-01 The Capitol, Tallahassee, Florida 32399-1050 this 13<sup>th</sup> day of November, 2012.

  
Brandon M. Nichols

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**JUL 30 2012**  
**BOARD OF ACCOUNTANCY**

PETITION FOR VARIANCE FROM RULE 61H1-28.0052

<b>FILED</b>	
Department of Business and Professional Regulation Deputy Agency Clerk	
CLERK	Brandon Nichols
Date	<b>7/30/2012</b>
File #	

**Petitioner Information:**

Ricardo J. Diaz  
9013 Lee Vista Blvd.  
Apt. 1901  
Orlando, FL 32829

**Attorney Information:**

Not applicable

**VW 2012-252**

**Applicable portion of rule:**

61H1-28.0052(1)(b), FAC:

"Candidates must pass all four test sections of the CPA Examination within a rolling eighteen-month period, which begins on the date that the first test section(s) passed is taken. In the event all four test sections of the CPA Examination are not passed within the rolling eighteen-month period, credit for any test section(s) passed outside the eighteen-month period will expire and that test section(s) must be retaken."

**The citation to the statute the rule is implementing:**

Section 473.306, FS - Examinations

**Type of action requested:**

The petitioner requests that the Board of Accountancy please waive 61H1-28.0052(1)(b), FAC (stated above) for his personal situation.

**Specific facts that demonstrate a violation of principles of fairness that would justify a variance for petitioner:**

The petitioner scheduled the final section of the CPA exam on the 28<sup>th</sup> of February 2012 (just before the expiration of the rolling eighteen-month period for the Audit exam section passed). However, the petitioner was not able to take this test which if passed would have permitted the petitioner to complete all four exam sections within the rolling eighteen-month period. The reason that the petitioner was not able to take the exam is that his first child was born via emergency c-section on February 22<sup>nd</sup>, 2012. The petitioner's wife and baby were in the hospital for 5 days because of complications with infections that needed to be treated with antibiotics. Also, the petitioner became sick on the 22<sup>nd</sup> with strep throat, chest & sinus congestion. This sickness lasted for two weeks and did not allow the petitioner to think clearly during this period of time. The petitioner decided not to take the exam because he didn't have had the mental clarity to finish studying for the exam and take it on the 28<sup>th</sup>.

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**AUG 03 2012**

**DBPR Agency Clerk**

**The reason why the variance would serve the purposes of the underlying statute:**

The petitioner passed the fourth section of the CPA exam in the exam window following the one in which he was not able to take the exam due to the circumstances outlined above. If the petitioner would have been able to take the exam when he had scheduled it, there is a good probability that he would have passed the exam and completed all four sections of the CPA within the rolling eighteen month period. To grant the petitioner the variance, in the petitioner's point of view, would be fair due to the unforeseen circumstances that transpired. Also, the petitioner is of good moral character.

**Petitioner Statement:**

The petitioner seeks a permanent variance from Rule 61M1-28.0052(1)(b), FAC.

**ATTACHMENTS**